

## CONFERENCE COMMITTEE REPORT 10

By Lynn

### **Conference Committee Report on House Bill No. 1815 / Senate Bill No. 1388**

The House and Senate Conference Committee appointed pursuant to motions to resolve the differences between the two houses on House Bill No. 1815 (Senate Bill No. 1388) has met and recommends that all amendments be deleted.

The Committee further recommends that the following amendment (#1031732) be adopted, as follows:

by deleting SECTION 4, § 4-5-108, and by substituting instead the following:

#### **§ 4-5-108.**

(a) Any legislation that, in whole or in part, amends or repeals any provision of this chapter; or any legislation that reestablishes, restructures or otherwise delegates any type of rulemaking authority to any new or pre-existing governmental entity to which this chapter applies, shall be referred to the government operations committee according to the rules of the senate and the rules of the house of representatives. The government operations committee of each house shall then review the legislation and shall recommend that the legislation be considered for passage or shall recommend against passage to the appropriate standing committee.

(b) Except when the government operations committee is designated as the appropriate standing committee, nothing contained in the provisions of this section shall be construed to authorize the government operations committee to delay or prevent consideration of such legislation by the appropriate house by withholding its recommendation.

(c) Nothing contained within the provisions of this chapter shall be construed to prevent the government operations committee from being considered as an appropriate

standing committee to consider legislation that amends or repeals any provision of this chapter.

AND FURTHER AMEND by deleting in the amendatory language of SECTION 10 the language "seventy-five (75) days" and by substituting instead the language "ninety (90) days".

AND FURTHER AMEND by deleting in its entirety subsection (b) from Section 4-5-208 of SECTION 11 and by substituting instead the following:

(b) Such emergency rule shall become effective immediately, unless otherwise stated in the rule, upon a copy of such rule and a copy of the written statement of the reasons for the rule being filed with the secretary of state. The emergency rule may be effective for a period of not longer than one hundred eighty (180) days. An agency shall not adopt the same or a substantially similar emergency rule within one (1) calendar year from its first adoption, unless the agency clearly establishes that it could not reasonably be foreseen during the initial one hundred eighty-day period that such emergency would continue or would likely recur during the next nine (9) months. The adoption of the same or substantially similar rule through ordinary rulemaking procedures authorized by this chapter shall not be precluded by this section.

AND FURTHER AMEND by adding the following language to the end of the amendatory language of SECTION 12:

The Tennessee code commission is directed to compile a list of all public necessity rules that are subject to this section and provide such list by January 1 of each year to each member of the house and senate government operations committees.

AND FURTHER AMEND by deleting in the amendatory language of SECTION 13 the language "shall review the legality of every rule" and by substituting instead the language "shall review the legality and constitutionality of every rule".

AND FURTHER AMEND by deleting in SECTION 13 the following language:

If more than forty-five (45) days have passed since a rule was filed with the office of the attorney general and such rule has not been approved or disapproved by the attorney general and reporter, then such rule may be filed in the office of the secretary of state. An affidavit attesting to the filing of rule with the office of attorney general and

reporter for more than forty-five (45) days without receiving approval or disapproval by the attorney general and reporter shall be submitted upon the filing of such rule with the secretary of state.

AND FURTHER AMEND by deleting SECTION 14 of the bill as amended and by substituting instead the following:

SECTION 14. Prior to the effective date of a rule, the agency proposing the rule may stay the running of the ninety-day period required by § 4-5-207 for a period of time not to exceed seventy-five (75) days. Such stay shall become effective at such time as the agency files written notice with the secretary of state and shall specify the length of the effectiveness of the stay. Prior to the expiration date of the stay, such stay may be withdrawn by the agency. Withdrawal or expiration of the stay shall reactivate the running of the balance of the ninety-day period that remained upon the date the stay was filed.

AND FURTHER AMEND by deleting in its entirety SECTION 15 of the printed bill and by renumbering the subsequent sections accordingly.

AND FURTHER AMEND by deleting the first two (2) sentences of the amendatory language of Section 4-5-220(a) in SECTION 16 and by substituting instead the following:

After a rule is filed, the secretary of state shall within five (5) business days of its acceptance add the filed rule to the appropriate location within the portion of the secretary of state's web site devoted to this chapter. The secretary of state's web site shall contain the following:

AND FURTHER AMEND by deleting in its entirety SECTION 18 and by substituting instead the following:

SECTION 18. Tennessee Code Annotated, Section 4-5-224(a), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) Submit electronically to the secretary of state the notice of hearing for publication in the notice section of the administrative register web site and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register web site; and

AND FURTHER AMEND by adding the following language to the end of subsection (c) of Section 4-5-226 of SECTION 20:

The house and senate government operations committees shall strive to hear rules within ninety (90) days of such rules being filed in the office of the secretary of state.

AND FURTHER AMEND by deleting in subsection (d) of Section 4-5-226 of SECTION 20 the language "seventy-five day period" and by substituting instead the language "ninety day period".

AND FURTHER AMEND by deleting in subsection (i)(1)(H) of Section 4-5-226 of SECTION 20 the language "Office address" and by substituting instead the language "Office address, e-mail address,".

AND FURTHER AMEND by deleting the existing subdivision (2) of subsection (i) of Section 4-5-226 of SECTION 20 of the printed bill and by substituting instead the following:

(2)

(A) All amendments to existing executive agency rules to be reviewed by the committees or subcommittees pursuant to this part shall be filed with the secretary of state. One (1) copy of the amendments shall be filed in redline form for review by the committee or subcommittees.

(B) As used in subdivision (i)(2)(A), "redline form" means to denote all amendments to an existing rule by placing a line through all language to be deleted and by including all language to be added in brackets or underlined or by another clearly recognizable method that indicates the changes made to the rule.

(3) Failure to comply with the provisions of this subsection (i) may be considered as evidence of the failure by an agency to meet its burden of proof required by subsection (d).

(4) The secretary of state shall refuse to accept the filing of any rule that fails to comply with this subsection (i).

AND FURTHER AMEND by adding the following new sections immediately preceding the effective date section and by renumbering the subsequent section accordingly:

SECTION \_\_\_\_\_. Tennessee Code Annotated, Section 4-5-214, is amended by designating the existing language as subsection (a) and by adding a new subsection thereto, as follows:

(b) If, pursuant to this chapter, an agency withdraws a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

SECTION \_\_\_\_\_. Tennessee Code Annotated, Section 4-5-218, is amended by deleting subsection (e) in its entirety.

SECTION \_\_\_\_\_. Tennessee Code Annotated, Section 4-5-402, is amended in subsection (a) by deleting the language "and 4-5-202(a)" and by substituting instead the language "and 4-5-203(a)".

SECTION \_\_\_\_\_. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

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Senator Jack Johnson

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Representative Susan Lynn

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Senator Tim Barnes

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Representative Beth Harwell

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Senator Bo Watson

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Representative Gerald McCormick

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Senator Reginald Tate

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Representative Judd Matheny

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Senator Dewayne Bunch

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Representative Craig Fitzhugh